



BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93 and 130

[Docket No. APHIS-2021-0052]

RIN 0579-AE67

Process for Establishing Rates for Veterinary Services User Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are revising the regulations concerning user fees that we charge for veterinary diagnostic services and for certain import-related and export-related services for live animals, animal products and byproducts, birds, germplasm, organisms, and vectors. We are removing the tables providing the individual fees from the regulations and posting them on an Animal and Plant Health Inspection Service website. The regulations instead specify the methodology (formula) used to calculate the fees (including imputed costs), and the fees will be updated using a notice-based process. Replacing the current user fee listings with a standardized methodology will increase transparency in the process of setting fee rates, align the regulations with other Agency practices, and allow us to streamline processes and reduce the number of rules needed and thus the time necessary in order to update the fees.

DATES: This rule is effective [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Slimmer, User Fee Financial Team Manager, Veterinary Services Money Management, 920 Main Campus Drive, Raleigh, NC 27606; (919) 855-7253.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 130 (referred to below as the regulations or the user fee regulations) cover user fees to reimburse the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import/export related services for live animals, animal products and byproducts, poultry, birds, germplasm, organisms, and vectors. These user fees are authorized by section 2509(c) of the Food, Agriculture, Conservation, and Trade Act (FACT Act) of 1990, as amended (21 U.S.C. 136a(c)), which provides that the Secretary of Agriculture may, among other things, prescribe regulations and collect fees to recover the costs of providing import/export related services for animals, animal products and byproducts, birds, germplasm, organisms, and vectors, and for veterinary diagnostics relating to the control and eradication of communicable diseases of livestock or poultry within the United States.

Since fiscal year (FY) 1992, APHIS has received no directly appropriated funds to cover the cost of certain veterinary diagnostics or to provide import/export related services for animals, animal products and byproducts, birds, germplasm, organisms, and vectors. Our ability to provide these services depends on user fees. User fees are associated with providing services for live animal, animal product, bird, and germplasm imports and exports and fund, among other things, quarantine services, the processing of import permit applications, port of entry inspections, inspections and approvals of import/export facilities and establishments, endorsements of export certificates, and services related to emergency situations that arise during the export or import process.

Discussion of Comments

On October 3, 2022, we published in the *Federal Register* (87 FR 59731-59740, Docket No. APHIS-2021-0052) a proposal¹ to amend the regulations concerning user fees that we charge

¹ To view the proposed rule and the comments we received, go to www.regulations.gov. Enter APHIS-2021-0052 in the Search field.

for veterinary diagnostic services and for certain import-related and export-related services for live animals, animal products and byproducts, birds, germplasm, organisms, and vectors. We proposed to remove the tables providing the individual fees from the regulations and post them on an APHIS website.

We proposed that the regulations would instead specify the methodology (formula) used to calculate the fees (including imputed costs), and APHIS would update the fees using a notice-based process. Replacing the current user fee listings with a standardized methodology would increase transparency in the process of setting fee rates, align the regulations with other Departmental practices, and allow us to streamline processes and reduce the number of rules needed to update the fees.

We solicited comments concerning our proposal for 60 days ending December 2, 2022. We received 11 comments on the proposal. They were from stakeholder organizations and the general public.

Permits

One commenter, noting that user fees are charged for permit issuance, proposed that we extend the import/export duration for permits to reduce the workload for applicants and the agency. Additionally, the commenter mentioned that there were no details provided regarding the relative cost of a permit versus a renewal or an amendment.

Although permit duration goes beyond the scope of the rule, APHIS may, if warranted, adjust the duration of a permit after analysis of the request; this will depend upon the product and overall risk. Because of the amount of time necessary to complete the work, renewals and amendments of permits currently cost less than new permit issuance, and we anticipate this will continue to be the case under the terms of this rule.

Burden of Fees

Two commenters raised concerns regarding the potentially burdensome impact of user fees on stakeholders who move and trade livestock and requested that user fees should be

updated through a process that notifies them of potential increases well in advance of the actual fee setting and allows for public comment. The commenters stressed the need for such advance notification in order for stakeholders to make informed decisions regarding future business planning and decision making.

The notice-based process established by this rule provides such advance notification and opportunity for comment. As we stated in the proposed rule, if this rule is finalized, we will publish an annual notice proposing the fee rates for the coming year and will provide information regarding the basis for any fee change. This includes changes to the values of component costs. The notice will also afford an opportunity for public comment.

Component Cost Values

Several commenters stated there was insufficient context to enable users to either understand the values of the component costs or to evaluate the impact of the proposed changes upon users' operations. The commenters suggested the proposed rule should be revised to provide a comparison of historical user fee rates to the new estimated user fees under this methodology for recent years (e.g., 2018 to 2022).

The specific values of components as they pertain to various fee rates were not included in the proposed rule because this rule does not change the fees, but rather establishes a notice-based process to change the fees. As we stated in the proposed rule and mention immediately above, if this rule is finalized, we will publish an annual notice proposing the fee rates for the coming year and will provide information regarding the basis for any fee change. This includes changes to the values of component costs. The notice will also afford an opportunity for public comment.

Commuted Travel Time

Several commenters stated the existing process for calculating commuted travel time as it pertains to user fees should be updated to be more reflective of actual travel time. One of the commenters specifically asked that APHIS evaluate such processes as they pertain to equine

import facilities. The commenters also suggested this reevaluation should take into consideration the particular employee's tour of duty hours in calculating fees assessed.

APHIS' regulations regarding Commuted Travel Time are in 9 CFR part 97. As we stated in the proposed rule, we proposed no changes to those regulations. Accordingly, the requested evaluations are outside of the scope of this rule.

Fee Caps

Several commenters asked that fee increases be capped annually. One commenter suggested the cap be a 10 percent increase annually.

As noted in the proposed rule, we will make efforts to reduce the likelihood of significant year-over-year increases in the fees. For example, within the reserve component of the fee, at the time annually when we calculate the proposed new fee rates, we will conduct forecasts of the upcoming 5 fiscal years to identify when IT infrastructure and facilities capital needs and investments are likely to be actualized, so that the cost of that expenditure can be prorated based on the estimated date of cost actualization. This forecasting will help ensure that no one fiscal year bears the brunt of a reasonably foreseeable capital cost when it comes to fee setting.

However, there are certain cost components and other factors beyond our control that preclude us from capping the fee increases annually as requested by commenters. For example, as noted in the proposed rule, imputed costs must be included in user fee calculations in order to comply with Office of Management and Budget circular A-25, but these imputed costs are outside of APHIS' control. They are the costs of the U.S. Department of Labor, U.S. Office of Personnel Management, and the U.S. Department of State (State Department) in order to provide retirement, health, life insurance, worker's compensation, legal defense, and other related benefits to the Agency and employees who provide the services covered by the fees. Likewise, for capital expenditures such as those for facility maintenance, fluctuations in the raw price of goods and labor are not within the Agency's control, but we must consider them in fee-setting.

User Fee Reserves

In the proposed rule, we proposed that the user fees for the APHIS Veterinary Services user fee program would have a reserve component. We proposed to define *reserve* as: “Funds above expected obligations that are required to effectively manage uncertainties in demand and timing to ensure sufficient operating funds in cases of bad debt, customer insolvency, fluctuations in activity volumes, information technology development costs, cash flow, facilities capital needs, or fluctuations in activity volumes caused by unforeseen global and national events.”

We indicated that the reserve would be calculated each year based on the forecasted needs identified during the annual fee setting session by estimating 25 percent or 90 days of annual expenditures for that fiscal year, adding a prorated component of forecasted IT and facilities capital needs and investments, and offsetting that sum by the existing amount in the reserve.

One commenter inquired about the baseline economic level for the user fee reserve to support the user fee system, as well as whether there is a maximum economic reserve level.

The commenter misunderstands the nature of the reserve. APHIS will not calculate the reserve component of the fee in order to ensure that a certain fixed dollar amount is maintained in the reserve year after year. Rather, as noted above, the reserve will be calculated each year based on the forecasted needs identified during the annual fee setting session by estimating 25 percent or 90 days of annual expenditures for that fiscal year, adding a prorated component of forecasted IT and facilities capital needs and investments, and offsetting that sum by the existing amount in the reserve. Thus, projected costs and the existing amount in the reserve will determine the reserve component requirements in any particular year.

The same commenter requested assurances that user fees reserve funds are solely used for the APHIS Veterinary Services user fee program.

Cross-subsidization is prohibited by the FACT Act. As a result, APHIS does not use these user fees for any purpose other than the APHIS Veterinary Services user fees program.

Notice Publication Timelines

A commenter asked for timelines regarding how long the notice-based process will take in order to adjust fees.

While this will vary depending on the nature and number of comments received, it is the Agency's intent, as stated in the proposed rule, to issue initial and second notices adjusting the fees on an annual basis.

Hourly Rate

In the proposed rule, we indicated that removal of the specific tables of user fees from the regulations in favor of listing them online necessitated reorganization of the entirety of part 130. This was because many of the sections in the part were tables that we were proposing to remove. For those provisions that we elected to retain, we indicated that the information presented would remain the same, although the streamlining did reorganize it. In the regulatory text in the proposed rule, for ease of readability, we laid out the entirety of the revised part 130.

One commenter requested clarity regarding proposed § 130.4, "Hourly rate and minimum fees." Although we did not propose to change any of the information regarding hourly rates and minimum fees previously found in the regulations, the commenter nonetheless pointed to an apparent discrepancy between paragraphs (a)(2), (15), and (17), regarding pet food facilities engaged in testing and export services. Paragraph (a)(2) stated that an hourly rate "does not apply to inspection and approval of import/export facilities and establishments." The commenter read that to suggest that APHIS would not charge an hourly rate for inspection of such facilities. The commenter read paragraphs (a)(15) and (17), which contained provisions relative to the export-related inspection of pet food facilities and export-related inspection of various other facilities, respectively, to indicate we would.

As noted in the introductory text of that section, import- or export-related veterinary services in the paragraphs specified in the section are subject to the hourly rate calculations. Accordingly, the pet food facilities will be charged an hourly rate, as indicated in paragraphs

(a)(15) and (17). The statements in paragraph (a)(2) are intended to indicate that paragraph (a)(2) does not pertain to inspection of export facilities. They are not intended to address the section as a whole and the proposed rule did not propose to revise their scope.

Another commenter stated that the rule had economic impacts that were not discussed in the proposed rule, insofar as services charged an hourly rate would be borne by importers.

The comment was outside the scope of this rulemaking because the rule did not revise the list of services subject to an hourly rate, but rather reduplicated the current list for the sake of completeness and readability of the regulatory text.

Two commenters noted that the rule indicated that several services would continue to be charged an hourly rate under the terms of the proposed rule and asked that APHIS develop guidance regarding how long specified services should be expected to take.

The estimated time of service can vary greatly depending on various factors (e.g., nature of the work, travel time to the facility, facility size, number of animals, etc.). Therefore, providing general, overarching guidance regarding expected times of service is not possible. However, we do provide an estimate based on the statement of work as requested by the facility or by the requester prior to providing services that are charged the hourly rate.

Government Funding

One commenter stated that the fees should not be changed and inquired why user fees are not government-funded activities.

As we stated in the proposed rule, we are not changing the fees, but the methodology used to calculate the fees. The fees themselves are not being changed.

The FACT Act's intent was for import and export activities to be funded through user fees, so the individuals or parties receiving the services are the ones paying for the service. As noted previously in this document, since fiscal year (FY) 1992, and consistent with the intent of the FACT Act, APHIS has received no directly appropriated funds to cover the cost of certain veterinary diagnostics or to provide import/export related services for animals, animal products

and byproducts, birds, germplasm, organisms, and vectors. In light of this, in order for us to continue to provide these diagnostics and services, they must be funded by user fees.

Miscellaneous

Finally, we noticed that 9 CFR part 93 currently has two references (in §§ 93.308(c)(1)(i)(A) and 93.412(d)(1)(i)(A)) to § 130.30. However, due to the revision of part 130 in this rule, § 130.30 no longer exists. Therefore, we are revising the references in those two sections of part 93 to simply refer to part 130.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is below.

APHIS Veterinary Services (VS) is revising the regulations in 9 CFR part 130 to provide for a set of standardized formulas by which import/export and veterinary diagnostic user fees would be calculated. These regulations will specify the methodology used to calculate and implement the user fees and will remove tables showing specific fees. VS will also post the fee rates on its website and annually issue a notice providing all fees calculated for the upcoming year using formulas contained in the regulations and request public comment.

VS charges user fees to recover the costs of inspection and certification services for imports and exports of live animals and animal products and byproducts and for providing veterinary diagnostic goods and services. VS does not receive appropriated funding to support these activities.

While we do not expect this rule to result in cost savings for affected entities, the methodology will provide a transparent, streamlined approach to user fee calculations. The

change to annual fee revisions using formula-based calculations based on previous year costs will enable APHIS to avert potential funding shortfalls. Increased confidence that rate adjustments will closely match revenue requirements would benefit financial planning by both the private sector and the Agency.

The component costs that VS will use to calculate user fee revisions will be the same as at present, with the exception of imputed labor costs, such as:

- Direct pay (including benefits)
- Cost of living
- Direct operating costs (travel, training, equipment, rent, facility maintenance, supplies and materials, service contracts)
- Consumer price index
- Program, Agency, and Department support costs
- Reserve
- Imputed costs

The user fee rates will also include imputed labor costs to ensure that the full cost of providing user fee services is captured. Imputed labor costs include Department of Labor, Office of Personnel Management, and State Department costs to provide retirement, health, life insurance, and other benefits to employees.

The annual regularity of the proposed VS user fee revisions will be in contrast to current circumstances. At present, VS establishes fees for 5 years at a time through rulemaking, and this process can be lengthy. VS has had to project costs 6 to 7 years into the future, which can result in unforeseen funding needs not being accounted for. For example, VS did not anticipate the high level of technological investment that has been necessary in order to meet the needs of customers.

APHIS' animal health import and export user fees cover significant activities across the country, including at border locations and quarantine facilities. These fees support personnel,

brick and mortar facilities, and information technology systems. The veterinary diagnostic user fees support activity at the National Veterinary Services Laboratories facilities in Ames, IA, and Plum Island, NY.

The last rate increase went into effect October 2012 and import/export user fee revenue has been flat, on average, since 2015, at \$44 million. Veterinary diagnostic user fee revenue has also been flat at an average of \$6 million per year since the last veterinary diagnostic user fee rate increase went into effect October 2011. The cost of providing services has continued to increase.

USDA's Agricultural Marketing Service and Food Safety and Inspection Service have recently implemented noticed-based processes for annual user fee revisions that are very similar to the APHIS process outlined in the proposed rule. The two agencies and their stakeholders have benefited from increased program efficiency and transparency.

A large number of the entities that will benefit from this rule are small. The import/export user fees provide for inspection and other services at the ports or point of entry. Users of these services and products include importers, exporters, non-APHIS veterinarians, commercial laboratories and pharmaceutical manufacturers, State laboratories, universities, and foreign governments.

The Small Business Administration (SBA) has established guidelines for determining which entities are to be considered small. Importers and exporters of live animals are identified within the broader wholesaling trade sector of the U.S. economy. A firm primarily engaged in wholesaling animals or animal products and byproducts is considered small if it employs not more than 100 persons. These entities either sell goods on their own account (import/export merchants) or arrange for the sale of goods owned by others (import/export agents and brokers).

Veterinary testing laboratories are identified within the broader veterinary services trade sector. A firm providing veterinary services is considered small if it generates \$6.5 million or

less in annual sales. The criterion for a small pharmaceutical manufacturing firm is one with 750 or fewer employees.

The number of entities that use VS diagnostic services and materials and qualify as small by SBA standards has not yet been determined. However, more than 91 percent of the firms in the NAICS Livestock Wholesale category and Other Farm Product Raw Material Wholesale category can be considered small. In addition, more than 99 percent of veterinary services firms (including veterinary diagnostic testing laboratories) are small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 93

Importation of Certain Animals, Birds, Fish, and Poultry, and Certain Animal, Bird, and Poultry Products; Requirements for Means of Conveyance and Shipping Containers.

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we are amending 9 CFR parts 93 and 130 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301-8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.308 [Amended]

2. Amend § 93.308, in paragraph (c)(1)(i)(A), by removing the citation “§ 130.30” and adding the citation “part 130” in its place.

§ 93.412 [Amended]

3. Amend § 93.412, in paragraph (d)(1)(i)(A), by removing the citation “§ 130.30” and adding the citation “part 130” in its place.

4. Revise part 130 to read as follows:

PART 130—USER FEES

Sec.

130.1 Definitions.

130.2 Basis for fees and rates.

130.3 Operating details.

130.4 Hourly rate and minimum user fees.

130.5 Exemptions.

130.6 Payment of user fees.

130.7 Penalties for nonpayment or late payment.

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301-8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

§ 130.1 Definitions.

As used in this part, the following terms shall have the meaning set forth in this section.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal. All animals except birds, but including poultry.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Animal Import Center. Quarantine facilities operated by APHIS in Newburgh, New York, and Miami, Florida.

APHIS representative. An individual, including, but not limited to, an animal health technician or veterinarian, authorized by the Administrator to perform the services for which the user fees in this part are charged.

Bird. Any member of the class aves, other than poultry.

Consumer price index. The measure of the average change over time in prices paid by urban consumers for a market basket of consumer goods and services, as determined by the Bureau of Labor Statistics annually.

Cost of living. The adjusted annual rate used to determine the cost of maintaining a certain standard of living based on the economic assumptions in the Office of Management and Budget's Presidential Economic Assumptions.

Diagnostic reagent. Substances used in diagnostic tests to detect disease agents or antibodies by causing an identifiable reaction.

Direct operating costs. Costs attributed to travel and transportation for personnel; materials, supplies, and other necessary items; training; general office supplies; rent; facility maintenance; equipment purchase and maintenance; utilities; contractual services; and information system operations, maintenance, and development.

Direct pay (including benefits). The wage labor costs (on board and in the hiring process), including benefits, for employees who specifically support and provide the required service.

Equine. Any horse, ass, mule, or zebra.

Export health certificate. An official document that, as required by the importing country, is endorsed by an APHIS representative and states that animals, animal products, organisms, vectors, or birds to be exported from the United States were found to be healthy and free from evidence of communicable diseases and pests.

Feeder animal. Any animal imported into the United States under part 93 of this chapter for feeding.

Germplasm. Semen, embryos, or ova.

Import compliance assistance. Services provided to an importer whose shipment arrives at a port of entry without the necessary paperwork or with incomplete paperwork and who requires assistance to meet the requirements for entry into the United States. Fees for import compliance assistance are charged in addition to the flat rate user fees.

Imputed costs. Office of Workers' Compensation costs from the Department of Labor; costs of employee leave earned in a prior fiscal year and used in the current fiscal year; Office of Personnel Management and Department of State (State Department) costs to provide retirement, health, and life insurance benefits to employees; unemployment compensation costs; and Department of Justice judgment fund costs.

In-bond animal. Any animal imported into the United States under a United States Customs Service bond, as described in 19 CFR part 113.

National Veterinary Services Laboratories (NVSL). The National Veterinary Services Laboratories of the Animal and Plant Health Inspection Service, located in Ames, Iowa.

National Veterinary Services Laboratories, Foreign Animal Disease Diagnostic Laboratory (FADDL). The National Veterinary Services Laboratories, Foreign Animal Disease Diagnostic Laboratory, located in Greenport, New York.

Person. An individual, corporation, partnership, trust, association, or any other public or private entity, or any officer, employee, or agent thereof.

Pet birds. Birds, except hatching eggs and ratites, that are imported or exported for the personal pleasure of their individual owners and are not intended for resale.

Poultry. Chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, and turkeys.

Privately operated permanent import-quarantine facility. Any permanent facility approved under part 93 of this chapter to quarantine animals or birds, except facilities operated by APHIS.

Program, Agency, and Department support. Indirect or direct costs of the program, including supporting services provided to the industry.

Reserve. Funds above expected obligations that are required to effectively manage uncertainties in demand and timing to ensure sufficient operating funds in cases of bad debt, customer insolvency, fluctuations in activity volumes, information technology development costs, cash flow, facilities capital needs, or fluctuations in activity volumes caused by unforeseen global and national events.

Standard feed. Seed, or dry feeds such as dog food or monkey biscuits, whether soaked in water or not.

Test. A single analysis performed on a single specimen from an animal, animal product, commercial product, or animal feed.

United States. The several States of the United States, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

§ 130.2 Basis for fees and rates.

(a) Except as set forth in paragraphs (b) through (d) of this section, for setting fee rates for each calendar year based upon the previous fiscal year, APHIS will calculate the rates for services as follows:

(1) APHIS will prorate the total Veterinary Services (VS) inspection, certification, or laboratory service program personnel direct pay (on board and in hiring process including benefits) for the previous fiscal year to each fee based upon the direct time factor percentage of employee's average time to perform and complete each fee code process and then multiply by the next year's percentage of cost of living increase.

(2) APHIS will prorate total direct operating costs for the previous fiscal year based upon the direct time factor percentage of employee's average time to perform and complete each fee code process to each fee and then multiply by the anticipated percentage of inflation for the next year.

(3) APHIS will add estimates for Program, Agency, and Department support costs, imputed costs, and reserves by applying a percentage based on information from Program, Agency, and Department officials and the Department of Treasury to the sum of the direct pay plus direct operating costs.

(4) The amounts derived via the process described in this paragraph (a) and paragraphs (b) and (c) of this section will be added and then APHIS will round up to the next \$0.25 for all fees less than \$10 or round up to the nearest dollar for all fees greater than \$10 to develop the new rate for each code.

(b) If there is no identifiable volume in the previous year for the service provided by the fee, if the fee is rarely charged, or if APHIS cannot readily identify level of effort, APHIS will calculate the fee based on the last available historic data encompassing multiple instances of use and add any intervening inflation, overhead and support costs, imputed costs, and reserve.

(c) Fees for the exclusive use of space in animal import centers will be calculated using the following formula:

(1) APHIS will calculate fees by using direct employee average time (with benefits) and adding a prorated portion of currently identifiable expenses (facilities, rent, support cost, and admin support costs), program and support overhead expenses, imputed costs, and reserve.

(2) APHIS will combine the costs to determine the monthly cost of providing the service at a single location within the animal import center.

(3) APHIS will calculate the costs of the other locations within the animal import center based on the square footage of the location.

(d) Services listed in § 130.4 will be charged an hourly rate-based user fee in accordance with the provisions of that section.

(Approved by the Office of Management and Budget under control number 0579-0055)

§ 130.3 Operating details.

(a) *General standards.* (1) User fee rates may be found online at www.aphis.usda.gov/business-services/vs-fees or by contacting LAIE@usda.gov. Changes in rates will be proposed annually in the following manner:

(i) APHIS will propose changes to the fee rates found at www.aphis.usda.gov/business-services/vs-fees through publication of a notice in the *Federal Register*. The notice will provide information regarding the basis for any fee change and will take public comment.

(ii) Following the comment period, APHIS will issue a subsequent notice in the *Federal Register* providing the final rates. The notice will respond to any comments received on the initial notice.

(iii) When this subsequent notice is issued, APHIS will update the fee rates found at www.aphis.usda.gov/business-services/vs-fees accordingly.

(2) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees in accordance with this section.

(b) User fees for individual animals and certain birds quarantined in the APHIS-owned or –operated quarantine facilities, including APHIS Animal Import Centers. (1) Each user fee is assessed per animal or bird quarantined by APHIS. Special requirements may be requested by the importer or required by an APHIS representative. Certain conditions or traits, such as pregnancy or aggression, may necessitate special requirements for certain birds or poultry.

(2) For any animal or bird that requires a diet other than standard feed, including but not limited to diets of fruit, insects, nectar, or fish, the importer must either provide feed or pay for it on an actual cost basis, including the cost of delivery to the APHIS owned or operated Animal Import Center or quarantine facility.

(c) User fees for exclusive use of space at APHIS Animal Import Centers. (1) An importer may request to exclusively occupy a space at an APHIS animal import center. Any importer who occupies space for more than 30 days must pay 1/30th of the 30-day fee for each additional day or part of a day.

(2) Unless the importer cancels the reservation for exclusive use of space in time to receive a refund of the reservation fee in accordance with §§ 93.103, 93.204, 93.304, 93.404, or 93.504 of this chapter, as appropriate, the 30-day user fee will be effective as of the first day for which the importer has reserved the space and for the entirety of the reservation, regardless of whether the user occupies the space on that date or not.

(3) Users must provide APHIS personnel at the Animal Import Center, at the time they make a reservation for quarantine space, with the following information:

- (i) Species of animals and birds to be quarantined;
- (ii) Ages of animals and birds to be quarantined; and
- (iii) Sizes of animals and birds to be quarantined.

(4)(i) APHIS personnel at the Animal Import Center will determine, based on the information provided by the importer under paragraph (b)(3) of this section, and on routine husbandry needs, the maximum number of animals and birds permitted in the requested building.

(ii) If APHIS personnel at the Animal Import Center determine the number of animals and birds requested by the importer can be housed in the space requested, but two animal health technicians cannot fulfill the routine husbandry needs of the number of animals or birds proposed by the importer, then the importer must either:

(A) Pay for additional services on an hourly basis; or

(B) Reduce the number of animals or birds to be quarantined to a number which APHIS personnel at the Animal Import Center determine can be handled by two animal health technicians.

(iii) If the importer requests additional services, then APHIS will calculate the user fees for any service rendered by an APHIS representative at the hourly rate user fee found online at www.aphis.usda.gov/business-services/vs-fees.

(iv) The importer must either provide feed or pay for it on an actual cost basis, including the cost of delivery to the APHIS owned or operated Animal Import Center or quarantine facility, for any animal or bird that requires a diet other than standard feed, including but not limited to diets of fruit, insects, nectar, or fish.

(d) *User fees for inspection of live animals at land border ports along the United States-Canada border.* If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee found online at www.aphis.usda.gov/business-services/vs-fees.

(e) *User fees for pet birds.* (1) Based on the information provided to APHIS personnel, APHIS personnel at the Animal Import Center or other APHIS owned or supervised quarantine facility will determine the appropriate number of birds that should be housed per isolette.

(2) If the importer requests additional services, then APHIS will calculate the user fees for those services at the hourly rate user fee found online at www.aphis.usda.gov/business-services/vs-fees for each employee required to perform the service.

(f) *User fees for endorsing export certificates.* (1) User fees for the endorsement of export health certificates that require the verification of tests or vaccinations are found online at www.aphis.usda.gov/business-services/vs-fees. APHIS will calculate the user fees to apply to each export health certificate endorsed¹ for animals and birds based on the number of animals or birds covered by the certificate and the number of tests or vaccinations required. However, there will be a maximum user fee of 12 times the hourly rate user fee.

¹ An export health certificate may need to be endorsed for an animal being exported from the United States if the country to which the animal is being shipped requires one. APHIS endorses export health certificates as a service.

(2) If an export certificate covers more than one animal, but the number of tests required for different animals are not the same, the user fee for the certificate is the fee which would be due if all the animals on the certificate required the same number of tests as the animal which requires the greatest number of tests.

(3) The user fees referenced in this section will not apply to an export health certificate if:

(i) An APHIS veterinarian prepares the certificate for endorsement completely at the site of the inspection in the course of performing inspection or supervision services for the animals listed on the certificate; and

(ii) An APHIS user fee is payable under § 130.4 for the inspection or supervision services performed by the veterinarian.

(4) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee listed in this section.

(g) *User fees for inspection services outside the United States.* (1) If inspection services (including inspection, testing, and supervision services) are performed outside the United States, in accordance with this title, and the regulations do not contain a provision for payment of the cost of the service, the person requesting the service must pay a user fee.

(2) Any person who wants APHIS to provide inspection services outside the United States must contact the Animal and Plant Health Inspection Service, Veterinary Services, Strategy and Policy, Live Animal Imports at LAIE@usda.gov, to make an agreement.

(3) All agreements for inspection services outside the United States must include:

(i) Name, mailing address, and telephone number of either the person requesting the inspection services, or his or her agent;

(ii) Explanation of inspection services to be provided, including the regulations in this chapter which provide for the services;

(iii) Date(s) and time(s) the inspection services are to be provided;

(iv) Location (including street address) where inspection services are to be provided;

(v) An estimate of the actual cost, as calculated by APHIS, to provide the described inspection services for 6 months;

(vi) A statement that APHIS agrees to provide the inspection services;

(vii) A statement that the person requesting the inspection services, or, if appropriate, his or her agent, agrees to pay, at the time the agreement is entered into, a user fee equal to the estimated cost of providing the described inspection services for 6 months; and

(viii) A statement that the person requesting the inspection services, or, if appropriate, his or her agent, agrees to maintain a user fee payment account equal to the cost of providing the described inspection services for 6 months, as calculated monthly by APHIS.

(4) APHIS will enter into an agreement only if qualified personnel can be made available to provide the inspection services.

(5) An agreement can be terminated by either party on 30 days written notice.

(6) If, at the time an agreement is terminated, any unobligated funds remain in the user fee payment account, APHIS will refund the funds to the person who requested the inspection services, or his or her agent.

(Approved by the Office of Management and Budget under control numbers 0579-0015, 0579-0020, 0579-0040, and 0579-0055)

§ 130.4 Hourly rate and minimum user fees.

(a) *Services subject to hourly rate user fees.* User fees for import- or export-related veterinary services listed in paragraphs (a)(1) through (18) of this section, except those services covered by flat rate user fees, will be calculated at the hourly rate found online at www.aphis.usda.gov/business-services/vs-fees, for each employee required to perform the service. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.6 and 130.7.

(1) Providing services to live animals for import or entry at airports, ocean ports, and rail ports.

(2) Conducting inspections, including inspections of laboratories and facilities (such as biosecurity level two facilities), required either to obtain import permits for animal products and byproducts, aquaculture products, or organisms or vectors, or to maintain compliance with import permits. This hourly rate does not apply to inspection and approval of import/export facilities and establishments.

(3) Obtaining samples required to be tested, either to obtain import permits or to ensure compliance with import permits.

(4) Providing services for imported birds or ratites that are not subject to quarantine, such as monitoring birds— including but not limited to pet birds— between flights.

(5) Supervising the opening of in-bond shipments.

(6) Providing services for in-bond or in-transit animals to exit the United States.

(7) Inspecting an export isolation facility and the animals in it.

(8) Supervising animal or bird rest periods prior to export.

(9) Supervising loading and unloading of animals or birds for export shipment.

(10) Inspecting means of conveyance used to export animals or birds.

(11) Conducting inspections under part 156 of this chapter.

(12) Inspecting and approving an artificial insemination center or a semen collection center or the animals in it.

(13) Import or entry services for feeder animals including, but not limited to, feeder goats and feeder bison not covered by a flat rate user fee in connection with activities described in § 130.3(d).

(14) Export-related bird banding for identification.

(15) Export-related inspection and approval of pet food facilities, including laboratories that perform pet food testing.

(16) Export-related services provided at animal auctions.

(17) Various export-related facility inspections, including, but not limited to, fertilizer plants that utilize poultry waste, rendering plants, and potential embarkation facilities.

(18) Providing other import-or export-related veterinary services for which no flat rate user fee is specified.

(b) *When do I pay an additional amount for employee(s) working overtime?* You must pay an additional amount if you need an APHIS employee to work on a Sunday, on a holiday, or at any time outside the normal tour of duty of that employee. Instead of paying the hourly rate user fee, you pay the rate found online at www.aphis.usda.gov/business-services/vs-fees for each employee needed to get the work done.

(Approved by the Office of Management and Budget under control numbers 0579-0015, 0579-0020, 0579-0040, and 0579-0055)

§ 130.5 Exemptions.

(a) *Veterinary diagnostics.* APHIS will not charge user fees for veterinary diagnostic services under the following conditions:

(1) When veterinary diagnostic services are provided in connection with Federal programs to control or eradicate diseases or pests of livestock or poultry in the United States (program diseases);

(2) When veterinary diagnostic services are provided in support of zoonotic disease surveillance when the Administrator has determined that there is a significant threat to human health; and

(3) When veterinary diagnostic reagents are distributed within the United States for testing for foreign animal diseases.

(b) [Reserved]

§ 130.6 Payment of user fees.

(a) *Who must pay APHIS user fees?* Any person for whom a service is provided related to the importation, entry, or exportation of an animal, article, or means of conveyance or related to veterinary diagnostics, and any person requesting such service, shall be jointly and severally liable for payment of fees assessed.

(b) *Associated charges*—(1) *Reservation fee.* Any reservation fee paid by an importer under part 93 of this chapter will be applied to the APHIS user fees described in § 130.3(b) and (c) for animals or birds quarantined in an animal import center.

(2) *Special handling expenses.* The user fees in this part do not include any costs that may be incurred due to special mail handling, including, but not limited to, express, overnight, or foreign mailing. If any service requires special mail handling, the user must pay all costs incurred, in addition to the user fee for the service.

(3) *When do I pay an additional amount for employee(s) working overtime?* You must pay an additional amount if you need an APHIS employee to work on a Sunday, on a holiday, or at any time outside the normal tour of duty of that employee. You pay the amount specified in this paragraph (b)(3) as relevant, for each employee needed to get the work done.

(i) *What additional amount do I pay if I receive a flat rate user fee service?* In addition to the flat rate user fee(s), you pay the overtime rate listed in Table 1 of this section for each employee needed to get the work done:

(ii) *What amount do I pay if I receive an hourly rate user fee service?* Instead of paying the normal hourly rate user fee described in § 130.4(a), you pay the premium rate described in § 130.4(b) for each employee needed to get the work done:

Table 1 to Paragraph (b)(3)(i)—Overtime for Flat Rate User Fees^{1, 2}

Service Provided	Outside of the employee's normal tour of duty	Overtime Rates by Hour		
		Nov. 2, 2015-Sept. 30, 2016	Oct. 1, 2016-Sept. 30, 2017	Beginning Oct. 1, 2017
Rate for inspection, testing, certification or quarantine of animals, animal products or other commodities ³	Monday through Saturday and holidays	\$75	\$75	\$75
	Sundays	\$99	\$99	\$100
Rate for commercial airline inspection services ⁴	Monday through Saturday and holidays	\$64	\$65	\$65
	Sundays	\$85	\$86	\$86

¹APHIS will charge a minimum charge of 2 hours, unless performed on the employee's regular workday and performed in direct continuation of the regular workday or begun within an hour of the regular workday.

²When the 2-hour minimum applies, you may need to pay commuted travel time. (See § 97.1(b) of this chapter for specific information about commuted travel time.)

³See § 97.1(a) of this chapter or 7 CFR 354.3 for details.

⁴See § 97.1(a)(3) of this chapter for details.

(c) *When are APHIS user fees due?*—(1) *Animal and bird quarantine and related tests.* User fees for animals and birds in an Animal Import Center or privately operated permanent or temporary import quarantine facilities, including user fees for tests conducted on these animals or birds, must be paid prior to the release of those animals or birds from quarantine.

(2) *Supervision and inspection services for export animals, animal products and byproducts.* User fees for supervision and inspection services described in § 130.4 must be paid

when billed, or, if covered by a compliance agreement signed in accordance with this chapter, must be paid as specified in the agreement.

(3) *Export health certificates.* User fees for export health certificates described in § 130.3(f) must be paid prior to receipt of endorsed certificates. If APHIS determines that the user has established an acceptable credit history, the user may request to pay when billed.

(4) *Veterinary diagnostics.* User fees specified for veterinary diagnostic services, such as tests on samples submitted to NVSL or FADDL, diagnostic reagents, slide sets, tissue sets, and other veterinary diagnostic services, must be paid when the veterinary diagnostic service is requested. If APHIS determines that the user has established an acceptable credit history, the user may request to pay when billed.

(5) *Other user fee services.* User fees for import or entry services for land border ports along the United States-Mexico or United States-Canada border, inspection of germplasm being exported, release from export agricultural hold, and other services described in § 130.4 must be paid when service is provided (for example when live animals are inspected when presented for importation at a port of entry). If APHIS determines that the user has established an acceptable credit history, the user may request to pay when billed.

(d) *What payment methods are acceptable?* Payment must be for the exact amount due and may be paid by:

(1) *Cash.* Cash will be accepted only during normal business hours if payment is made at an APHIS office or an Animal Import Center;

(2) *Checks.* All types of checks, including traveler's checks, drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA;

(3) *Money orders.* Money orders, drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA; or

(4) *Credit cards.* Credit cards (VISA™ and MasterCard™) if payment is made at an Animal Import Center or an APHIS office that is equipped to process credit cards.

§ 130.7 Penalties for nonpayment or late payment.

(a) *Unpaid debt.* If any person for whom the service is provided fails to pay when due any debt to APHIS, including any user fee due under 7 CFR chapter III or this chapter, then:

(1) *Subsequent user fee payments.* Payment must be made for subsequent user fees before the service is provided if:

(i) For unbilled fees, the user fee is unpaid 60 days after the date the pertinent regulatory provision indicates payment is due;

(ii) For billed fees, the user fee is unpaid 60 days after date of bill;

(iii) The person for whom the service is provided or the person requesting the service has not paid the late payment penalty or interest on any delinquent APHIS user fee; or

(iv) Payment has been dishonored.

(2) *Resolution of difference between estimate and actual.* APHIS will estimate the user fee to be paid; any difference between the estimate and the actual amount owed to APHIS will be resolved as soon as reasonably possible following the delivery of the service, with APHIS returning any excess to the payor or billing the payor for the additional amount due.

(3) *Prepayment form.* The prepayment must be in guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the debtor pays the delinquent debt.

(4) *Denied service.* Service will be denied until the debt is paid if:

(i) For unbilled fees, the user fee is unpaid 90 days after date the pertinent regulatory provision indicates payment is due; or

(ii) For billed fees, the user fee is unpaid 90 days after date of bill; or

(iii) The person for whom the service is provided or the person requesting the service has not paid the late payment penalty or interest on any delinquent APHIS user fee; or

(iv) Payment has been dishonored.

(b) *Unpaid debt during service.* If APHIS is in the process of providing a service for which an APHIS user fee is due, and the user has not paid the fee within the time required, or if the payment offered by the user is inadequate or unacceptable, then APHIS will take the following action:

(1) *Animals or birds in quarantine.* If an APHIS user fee is due for animals or birds in quarantine at an animal import center or at a privately operated import quarantine facility, APHIS will not release them.

(2) *Export health certificate.* If an APHIS user fee specified is due for an export health certificate, APHIS will not release the certificate.

(3) *Veterinary diagnostics.* If an APHIS user fee is due for a veterinary diagnostic test or service, APHIS will not release the test result, any endorsed certificate, or any other veterinary diagnostic service.

(c) *Late payment penalty.* In addition to the actions described in paragraph (b) of this section, APHIS will impose a late payment penalty and interest charges in accordance with 31 U.S.C. 3717 for:

(1) *Unbilled user fees.* Unbilled user fees, if the user fees are unpaid 30 days after the date the pertinent regulatory provisions indicates payment is due; or

(2) *Billed user fees.* Billed user fees, if the user fees are unpaid 30 days after the date of the bill.

(d) *Dishonored payment penalties.* User fees paid with dishonored forms of payment, such as a check returned for insufficient funds, will be subject to interest and penalty charges in accordance with 31 U.S.C. 3717. Administrative charges will be assessed at \$20.00 per dishonored payment to be paid in addition to the original amount owed. Payment must be in guaranteed form, such as cash, money order, or certified check.

(e) *Debt collection management.* In accordance with the Debt Collection Improvement Act of 1996, the following provisions apply:

(1) *Taxpayer identification number.* APHIS will collect a taxpayer identification number from all persons, other than Federal agencies, who are liable for a user fee.

(2) *Administrative offset.* APHIS will notify the Department of Treasury of debts that are over 180 days delinquent for the purposes of administrative offset. Under administrative offset, the Department of Treasury will withhold funds payable by the United States to a person (i.e., Federal income tax refunds) to satisfy the debt to APHIS.

(3) *Cross-servicing.* APHIS will transfer debts that are over 180 days delinquent to the Department of Treasury for cross-servicing. Under cross-servicing, the Department of Treasury will collect debts on behalf of APHIS. Exceptions will be made for debts that meet certain requirements, for example, debts that are already at a collection agency or in payment plan.

(4) *Report delinquent debt.* APHIS will report all unpaid debts to credit reporting bureaus.

(f) *Animals or birds abandoned after quarantine at an animal import center.* Animals or birds left in quarantine at an animal import center for more than 30 days after the end of the required quarantine period will be deemed to be abandoned.

(1) *Release of abandoned animals or birds from quarantine.* After APHIS releases the abandoned animals or birds from quarantine, APHIS may seize them and sell or otherwise dispose of them, as determined by the Administrator, provided that their sale is not contrary to any Federal law or regulation. APHIS may recover all expenses of handling the animals or birds from the proceeds of their sale or disposition.

(2) *Seizure and disposal of abandoned animals or bird.* If animals or birds abandoned in quarantine at an animal import center cannot be released from quarantine, APHIS may seize and dispose of them, as determined by the Administrator, and may recover all expenses of handling the animals or birds from the proceeds of their disposition and from persons liable for user fees under § 130.6(a).

(Approved by the Office of Management and Budget under control number 0579-0055)

Done in Washington, DC, this 26th day of July 2023.

Michael Watson

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023-16278 Filed: 7/31/2023 8:45 am; Publication Date: 8/1/2023]